

Senate Study Bill 1074

SENATE/HOUSE FILE _____
BY (PROPOSED ATTORNEY
GENERAL BILL)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to requiring certain persons to submit a DNA
2 sample for DNA profiling, authorizing a fee, providing a
3 penalty, and providing effective and contingent effective
4 dates.
5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
6 TLSB 1117DP 81
7 jm/sh/8

PAG LIN

1 1 DIVISION I
1 2 Section 1. NEW SECTION. 81.1 DEFINITIONS.
1 3 As used in this chapter, unless the context otherwise
1 4 requires:
1 5 1. "DNA" means deoxyribonucleic acid.
1 6 2. "DNA databank" means the repository for DNA samples
1 7 obtained pursuant to section 81.4.
1 8 3. "DNA database" means the collection of DNA profiles and
1 9 DNA records.
1 10 4. "DNA profile" means the objective form of the results
1 11 of DNA analysis performed on a DNA sample. The results of all
1 12 DNA identification analysis on an individual's DNA sample are
1 13 also collectively referred to as the DNA profile of an
1 14 individual.
1 15 5. "DNA profiling" means the procedure established by the
1 16 division of criminal investigation, department of public
1 17 safety, for determining a person's genetic identity.
1 18 6. "DNA record" means the DNA sample and DNA profile, and
1 19 other records in the DNA database and DNA data bank used to
1 20 identify a person.
1 21 7. "DNA sample" means a biological sample provided by any
1 22 person required to submit a DNA sample or a DNA sample
1 23 submitted for any other purpose under section 81.4.
1 24 8. "Person required to submit a DNA sample" means a person
1 25 convicted, adjudicated delinquent, who receives a deferred
1 26 judgment, or found not guilty by reason of insanity of an
1 27 offense requiring DNA profiling pursuant to section 81.2.
1 28 "Person required to submit a DNA sample" also means a person
1 29 determined to be a sexually violent predator pursuant to
1 30 section 229A.7.
1 31 Sec. 2. NEW SECTION. 81.2 PERSONS REQUIRED TO SUBMIT A
1 32 DNA SAMPLE.
1 33 1. The attorney general shall adopt rules in consultation
1 34 with the division of criminal investigation, department of
1 35 public safety, for the purpose of classifying felonies and
2 1 indictable misdemeanors which shall require the offender to
2 2 submit a DNA sample for DNA profiling upon confinement in or
2 3 prior to release from a county jail, upon commitment to the
2 4 custody of the director of the department of corrections, or
2 5 prior to discharge of sentence, or as a condition of
2 6 probation. Factors to be considered shall include the
2 7 deterrent effect of DNA profiling, the likelihood of repeated
2 8 violations, and the seriousness of the offense. The offenses
2 9 that require the offender to submit a DNA sample for DNA
2 10 profiling shall include but are not limited to the following:
2 11 a. Murder in violation of section 707.2 or 707.3.
2 12 b. Attempt to commit murder in violation of section
2 13 707.11.
2 14 c. Kidnapping in violation of section 710.1, 710.2, or

2 15 710.3.
2 16 d. Sexual abuse in violation of section 709.2, 709.3, or
2 17 709.4.
2 18 e. Assault with intent to commit sexual abuse in violation
2 19 of section 709.11.
2 20 f. Assault while participating in a felony in violation of
2 21 section 708.3.
2 22 g. Burglary in the first degree in violation of section
2 23 713.3.

2 24 2. A person determined to be a sexually violent predator
2 25 pursuant to chapter 229A shall be required to submit a DNA
2 26 sample for DNA profiling pursuant to section 81.4 prior to
2 27 discharge or placement in a transitional release program.

2 28 3. A person found not guilty by reason of insanity of an
2 29 offense that requires DNA profiling shall be required to
2 30 submit a DNA sample for DNA profiling pursuant to section 81.4
2 31 as part of the person's treatment management program.

2 32 4. A juvenile adjudicated delinquent of an offense that
2 33 requires DNA profiling of an adult offender shall be required
2 34 to submit a DNA sample for DNA profiling pursuant to section
2 35 81.4 as part of the disposition of the juvenile's case.

3 1 5. An offender placed on probation shall immediately
3 2 report to the judicial district department of correctional
3 3 services after sentencing so it can be determined if the
3 4 offender has been convicted of an offense requiring DNA
3 5 profiling. If it is determined by the judicial district that
3 6 DNA profiling is required, the offender shall immediately
3 7 submit a DNA sample.

3 8 Sec. 3. NEW SECTION. 81.3 ESTABLISHMENT OF DNA DATABASE
3 9 AND DNA DATABANK.

3 10 1. A state DNA database and a state DNA databank are
3 11 established under the control of the division of criminal
3 12 investigation, department of public safety. The division of
3 13 criminal investigation shall conduct DNA profiling of a DNA
3 14 sample submitted in accordance with this section.

3 15 2. A DNA sample shall be submitted, and the division of
3 16 criminal investigation shall store and maintain DNA records in
3 17 the DNA database and DNA databank for persons required to
3 18 submit a DNA sample.

3 19 3. A DNA sample may be submitted, and the division of
3 20 criminal investigation shall store and maintain DNA records in
3 21 the DNA database and DNA databank for any of the following:

3 22 a. Crime scene evidence and forensic casework.
3 23 b. A relative of a missing person.
3 24 c. An anonymous DNA profile used for forensic validation,
3 25 forensic protocol development, or quality control purposes, or
3 26 for the establishment of population statistics database.

3 27 4. A fingerprint record of a person required to submit a
3 28 DNA sample shall also be submitted to the division of criminal
3 29 investigation with the DNA sample to verify the identity of
3 30 the person required to submit a DNA sample.

3 31 Sec. 4. NEW SECTION. 81.4 COLLECTING, SUBMITTING,
3 32 ANALYZING, IDENTIFYING, AND STORING DNA SAMPLES AND DNA
3 33 RECORDS.

3 34 1. The division of criminal investigation shall adopt
3 35 rules for the collection, submission, analysis,
4 1 identification, storage, and disposition of DNA records.

4 2 2. A supervising agency having control, custody, or
4 3 jurisdiction over a person shall collect a DNA sample from a
4 4 person required to submit a DNA sample. The supervising
4 5 agency shall collect a DNA sample, upon admittance to the
4 6 pertinent institution or facility, of the person required to
4 7 submit a DNA sample or at a determined date and time set by
4 8 the supervising agency. If a person required to submit a DNA
4 9 sample is confined at the time a DNA sample is required, the
4 10 person shall submit a DNA sample as soon as practicable. If a
4 11 person required to submit a DNA sample is not confined after
4 12 the person is required to submit a DNA sample, the supervising
4 13 agency shall determine the date and time to collect the DNA
4 14 sample.

4 15 3. The supervising agency may collect a reasonable fee
4 16 from a person required to submit a DNA sample. If the person
4 17 required to submit a DNA sample is indigent, a waiver of the
4 18 fee may be obtained from the supervising agency by the person.

4 19 4. A person required to submit a DNA sample who refuses to
4 20 submit a DNA sample may be subject to contempt proceedings
4 21 pursuant to chapter 665 until the DNA sample is submitted.

4 22 5. The division of criminal investigation shall conduct
4 23 DNA profiling on a DNA sample or may contract with a private
4 24 entity to conduct the DNA profiling.

4 25 Sec. 5. NEW SECTION. 81.5 CIVIL AND CRIMINAL LIABILITY

4 26 == LIMITATION.

4 27 A person who collects a DNA sample shall not be civilly or
4 28 criminally liable for the collection of the DNA sample if the
4 29 person performs the person's duties in good faith and in a
4 30 reasonable manner according to generally accepted medical
4 31 practices or in accordance with the procedures set out in the
4 32 administrative rules of the department of public safety
4 33 adopted pursuant to section 81.4.

4 34 Sec. 6. NEW SECTION. 81.6 CRIMINAL OFFENSE.

4 35 1. A person who knowingly or intentionally does any of the
5 1 following commits an aggravated misdemeanor:

5 2 a. Discloses a DNA record to a person or agency that is
5 3 not authorized by the division of criminal investigation to
5 4 have access to the DNA record.

5 5 b. Uses or obtains a DNA record for a purpose other than
5 6 what is authorized under this chapter.

5 7 2. A person who knowingly or intentionally alters or
5 8 attempts to alter a DNA sample, falsifies the source of a DNA
5 9 sample, or materially alters a collection container used to
5 10 collect the DNA sample, commits a class "D" felony.

5 11 Sec. 7. NEW SECTION. 81.7 CONVICTION OR ARREST NOT
5 12 INVALIDATED.

5 13 The detention, arrest, or conviction of a person based upon
5 14 a DNA database match is not invalidated if it is determined
5 15 that the DNA sample or DNA profile was obtained or placed into
5 16 the DNA database by mistake or error.

5 17 Sec. 8. NEW SECTION. 81.8 CONFIDENTIAL RECORDS.

5 18 1. A DNA record shall be considered a confidential record
5 19 and disclosure of a DNA record is only authorized pursuant to
5 20 this section.

5 21 2. Confidential DNA records under this section may be
5 22 released to the following agencies for law enforcement
5 23 identification purposes:

5 24 a. Any criminal or juvenile justice agency as defined in
5 25 section 692.1.

5 26 b. Any criminal or juvenile justice agency in another
5 27 jurisdiction.

5 28 3. The division of criminal investigation shall share the
5 29 DNA record information with the appropriate federal agencies
5 30 for use in a national DNA database.

5 31 4. A DNA record or other forensic information developed
5 32 pursuant to this chapter may be released for use in a criminal
5 33 or juvenile delinquency proceeding in which the state is a
5 34 party and where the DNA record or forensic information is
5 35 relevant and material to the subject of the proceeding. Such
6 1 a record or information may become part of a public transcript
6 2 or other public recording of such a proceeding.

6 3 5. A DNA record or other forensic information may be
6 4 released pursuant to a court order for criminal defense
6 5 purposes to a defendant, who shall have access to DNA samples
6 6 and DNA profiles related to the case in which the defendant is
6 7 charged.

6 8 Sec. 9. NEW SECTION. 81.9 EXPUNGEMENT OF DNA RECORDS.

6 9 1. A person whose DNA record has been included in the DNA
6 10 database or DNA databank established pursuant to section 81.3
6 11 may request, in writing to the division of criminal
6 12 investigation, expungement of the DNA record from the DNA
6 13 database and DNA databank based upon the person's conviction,
6 14 adjudication, or civil commitment which caused the submission
6 15 of the DNA sample being reversed on appeal and the case
6 16 dismissed. The written request shall contain a certified copy
6 17 of the final court order reversing the conviction,
6 18 adjudication, or civil commitment, and a certified copy of the
6 19 dismissal, and any other information necessary to ascertain
6 20 the validity of the request.

6 21 2. The division of criminal investigation, upon receipt of
6 22 a written request that validates reversal on appeal of a
6 23 person's conviction, adjudication, or commitment, and
6 24 subsequent dismissal of the case, or upon receipt of a written
6 25 request by a person who voluntarily submitted a DNA sample
6 26 under section 81.3, subsection 3, paragraph "b", or upon
6 27 receipt of a written request by a person who voluntarily
6 28 submitted a DNA sample pursuant to section 81.3, subsection 3,
6 29 paragraph "b", shall expunge all of the DNA records and
6 30 identifiable information of the person in the DNA database and
6 31 DNA databank. However, if the division of criminal
6 32 investigation determines that the person is otherwise
6 33 obligated to submit a DNA sample, the DNA records shall not be
6 34 expunged. If the division of criminal investigation denies an
6 35 expungement request, the division shall notify the person
7 1 requesting the expungement of the decision not to expunge the

7 2 DNA record and the reason supporting its decision. The
7 3 division of criminal investigation decision is subject to
7 4 judicial review pursuant to chapter 17A. The division of
7 5 criminal investigation shall adopt rules governing the
7 6 expungement procedure and a review process.

7 7 3. The division of criminal investigation is not required
7 8 to expunge or destroy a DNA record pursuant to this section,
7 9 if expungement or destruction of the DNA record would destroy
7 10 evidence related to another person.

7 11 Sec. 10. Section 229A.7, Code 2005, is amended by adding
7 12 the following new subsection:

7 13 NEW SUBSECTION. 5A. If the court or jury determines that
7 14 the respondent is a sexually violent predator, the court shall
7 15 order the respondent to submit a DNA sample for DNA profiling
7 16 pursuant to section 81.4.

7 17 Sec. 11. Section 232.52, Code 2005, is amended by adding
7 18 the following new subsection:

7 19 NEW SUBSECTION. 10. The court shall order a juvenile
7 20 adjudicated a delinquent for an offense that requires DNA
7 21 profiling under section 81.2 to submit a DNA sample for DNA
7 22 profiling pursuant to section 81.4.

7 23 Sec. 12. Section 669.14, Code 2005, is amended by adding
7 24 the following new subsection:

7 25 NEW SUBSECTION. 15. Any claim arising from or related to
7 26 the collection of a DNA sample for DNA profiling pursuant to
7 27 section 81.4 or a DNA profiling procedure performed by the
7 28 division of criminal investigation, department of public
7 29 safety.

7 30 Sec. 13. Section 802.2, Code 2005, is amended to read as
7 31 follows:

7 32 802.2 SEXUAL ABUSE == FIRST, SECOND, OR THIRD DEGREE.

7 33 1. An information or indictment for sexual abuse in the
7 34 first, second, or third degree committed on or with a person
7 35 who is under the age of eighteen years shall be found within
8 1 ten years after the person upon whom the offense is committed
8 2 attains eighteen years of age, or if the identity of the
8 3 person against whom the information or indictment is sought is
8 4 established through the use of a DNA profile, an information
8 5 or indictment shall be found within three years from the date
8 6 the identity of the person is identified by the person's DNA
8 7 profile, whichever is later.

8 8 2. An information or indictment for any other sexual abuse
8 9 in the first, second, or third degree shall be found within
8 10 ten years after its commission, or if the identity of the
8 11 person against whom the information or indictment is sought is
8 12 established through the use of a DNA profile, an information
8 13 or indictment shall be found within three years from the date
8 14 the identity of the person is identified by the person's DNA
8 15 profile, whichever is later.

8 16 3. As used in this section, "identified" means a person's
8 17 legal name is known and the person has been determined to be
8 18 the source of the DNA.

8 19 Sec. 14. Section 901.5, subsection 8A, Code 2005, is
8 20 amended to read as follows:

8 21 8A. a. The court shall order DNA profiling of a defendant
8 22 convicted of an offense that requires profiling under section
8 23 ~~13.10~~ 81.2.

8 24 b. Notwithstanding section ~~13.10~~ 81.2, the court may order
8 25 the defendant to provide a ~~physical specimen~~ DNA sample to be
8 26 submitted for DNA profiling if appropriate. In determining
8 27 the appropriateness of ordering DNA profiling, the court shall
8 28 consider the deterrent effect of DNA profiling, the likelihood
8 29 of repeated offenses by the defendant, and the seriousness of
8 30 the offense.

8 31 Sec. 15. Section 906.4, unnumbered paragraph 3, Code 2005,
8 32 is amended to read as follows:

8 33 Notwithstanding section ~~13.10~~ 81.2, the board may order the
8 34 defendant to provide a ~~physical specimen~~ DNA sample to be
8 35 submitted for DNA profiling as a condition of parole or work
9 1 release, if appropriate. In determining the appropriateness
9 2 of ordering DNA profiling, the board shall consider the
9 3 deterrent effect of DNA profiling, the likelihood of repeated
9 4 offenses by the defendant, and the seriousness of the offense.

9 5 Sec. 16. 2002 Iowa Acts, chapter 1080, is repealed.

9 6 Sec. 17. Section 13.10, Code 2005, is repealed.

9 7 Sec. 18. PERSONS REQUIRED TO SUBMIT A DNA SAMPLE PRIOR TO
9 8 EFFECTIVE DATE OF THIS DIVISION OF THIS ACT. A person
9 9 convicted, adjudicated a delinquent, civilly committed as a
9 10 sexually violent predator, or found not guilty by reason of
9 11 insanity, prior to the effective date of this division of this
9 12 Act, who would otherwise be required to submit a DNA sample

9 13 under this division of this Act, and who is under the custody,
9 14 control, or jurisdiction of a supervising agency, shall submit
9 15 a DNA sample prior to being released from the supervising
9 16 agency's custody, control, or jurisdiction.

9 17 Sec. 19. EFFECTIVE DATE. This division of this Act, being
9 18 deemed of immediate importance, takes effect upon enactment.

9 19 DIVISION II

9 20 Sec. 20. Section 81.2, subsection 1, as enacted in
9 21 division I of this Act, is amended by striking the subsection
9 22 and inserting in lieu thereof the following:

9 23 1. A person against whom a judgment or conviction for a
9 24 felony has been entered shall be required to submit a DNA
9 25 sample for DNA profiling pursuant to section 81.4.

9 26 Sec. 21. CONTINGENT EFFECTIVE DATE. The effective date of
9 27 this division of this Act shall be the later of July 1, 2005,
9 28 or the date when sufficient funds have been appropriated or
9 29 are first received to pay the costs of conducting DNA
9 30 profiling on DNA samples submitted by all convicted felons.
9 31 The commissioner of public safety shall notify the Code editor
9 32 when sufficient funds have been appropriated or are first
9 33 received to pay the costs of complying with this division of
9 34 this Act.

9 35 EXPLANATION

10 1 This bill relates to requiring certain persons to submit a
10 2 DNA sample for DNA profiling.

10 3 DIVISION I = The division moves Code section 13.10 to new
10 4 Code section 81.2 and modifies the section. The division
10 5 requires submission of a DNA sample if a person is convicted
10 6 of or receives a deferred judgment for an offense. The
10 7 division requires a person civilly committed as a sexually
10 8 violent predator to provide a DNA sample for DNA profiling
10 9 prior to the person's discharge or placement in a transitional
10 10 release program. A juvenile who has been adjudicated a
10 11 delinquent of a criminal offense requiring a DNA sample under
10 12 new Code section 81.2 shall also submit a DNA sample for DNA
10 13 profiling under the division. The division also requires a
10 14 DNA sample from a person found not guilty by reason of
10 15 insanity of a criminal offense requiring a DNA sample under
10 16 new Code section 81.2. Current law provides that only a
10 17 person convicted of a criminal offense listed in Code section
10 18 13.10 is required to provide a DNA sample for DNA profiling.

10 19 The division establishes, in the division of criminal
10 20 investigation, department of public safety, a state DNA
10 21 database for storage of DNA profiles and records and a state
10 22 DNA databank for storage of DNA samples. The division defines
10 23 "DNA sample" to mean a biological sample provided by any
10 24 person required to submit a DNA sample or a biological sample
10 25 submitted for any other permissible purpose. The division
10 26 defines "DNA profile" to mean the objective form of the
10 27 results of the DNA analysis performed on the DNA sample.

10 28 The division provides that a supervising agency with
10 29 custody, control, or jurisdiction over a person required to
10 30 submit a DNA sample shall collect the sample, and may charge
10 31 the person a reasonable fee. If the person is indigent, the
10 32 fee may be waived. A person required to submit a DNA sample
10 33 who refuses to provide a sample is subject to contempt
10 34 proceedings. The division provides that a person collecting
10 35 the DNA sample is immune from civil or criminal liability if
11 1 the person collects the sample in a reasonable manner
11 2 according to generally accepted medical practices or with the
11 3 procedures set out in administrative rules.

11 4 The division provides that the division of criminal
11 5 investigation may contract with a private entity to conduct
11 6 such profiling.

11 7 The division provides that a person who knowingly or
11 8 intentionally discloses, uses, or obtains a DNA sample without
11 9 authorization commits an aggravated misdemeanor. The bill
11 10 also provides that any person who knowingly or intentionally
11 11 alters a DNA sample or sample collection container, or who
11 12 falsifies the source of a DNA sample, commits a class "D"
11 13 felony.

11 14 The division provides that any detention, arrest, or
11 15 conviction based upon a DNA database match is not invalidated
11 16 if it is later determined that the DNA profile was obtained or
11 17 placed into the DNA database by mistake or error.

11 18 The division provides that a DNA record is a confidential
11 19 record and may only be disclosed as provided in the bill. A
11 20 DNA record may be disclosed to a criminal and juvenile justice
11 21 agency, the federal government for a national database, and
11 22 any other agency using the confidential record in its official
11 23 capacity and for criminal defense purposes.

11 24 The division provides that if a person who is required to
11 25 submit a DNA sample has the person's conviction, adjudication,
11 26 or civil commitment subsequently reversed on appeal, the
11 27 person may file a written request with the division of
11 28 criminal investigation requesting that all DNA records be
11 29 expunged. The division also permits a relative of a missing
11 30 person who voluntarily submitted a DNA sample or a person who
11 31 submitted a sample for forensic work to request that their DNA
11 32 sample be expunged. Upon receipt of a certified copy of the
11 33 order reversing the conviction, adjudication, or civil
11 34 commitment, and a certified copy of the order dismissing the
11 35 case, the DNA records shall be expunged unless the destruction
12 1 of the records would destroy DNA evidence related to another
12 2 person.

12 3 If the division of criminal investigation denies the
12 4 request to expunge their DNA record, the division of criminal
12 5 investigation is required to notify the person in writing.
12 6 The bill provides that the denial may be appealed to district
12 7 court.

12 8 The division provides that any claim arising or related to
12 9 the collection of a DNA sample shall proceed under the state
12 10 tort claims Act in Code chapter 669.

12 11 The division also requires a person convicted, adjudicated
12 12 as delinquent, civilly committed as a sexually violent
12 13 predator, or found not guilty by reason of insanity, prior to
12 14 the effective date of the division, who would otherwise be
12 15 required to submit a DNA sample under the division, and who is
12 16 under the custody, control, or jurisdiction of a supervising
12 17 agency, to submit a DNA sample prior to being released from
12 18 the supervising agency's custody, control, or jurisdiction.

12 19 The division modifies the statute of limitations for any
12 20 sexual abuse in the first, second, or third degree by allowing
12 21 a case to be brought against a person within three years from
12 22 the date the identity of the person is identified by the
12 23 person's DNA profile. Current law provides that a sexual
12 24 abuse case must be prosecuted within 10 years of the
12 25 commission of the crime or within 10 years of the victim
12 26 attaining the age of 18.

12 27 The division repeals 2002 Acts, chapter 1080, which
12 28 requires all felons to submit a DNA sample for DNA profiling
12 29 upon sufficient funding because the law in the 2002 Acts does
12 30 not conform with the changes in this division and division II.

12 31 Division I, being deemed of immediate importance, takes
12 32 effect upon enactment.

12 33 DIVISION II = The division provides that all convicted
12 34 felons shall submit a DNA sample for DNA profiling upon the
12 35 appropriation of sufficient funds to cover the expense of
13 1 collecting and conducting DNA profiling on all convicted
13 2 felons.

13 3 Division II becomes effective on the later of July 1, 2005,
13 4 or the date when sufficient funds have been appropriated or
13 5 are first received to pay the costs of conducting DNA
13 6 profiling on DNA samples submitted by all convicted felons,
13 7 whichever is sooner.

13 8 LSB 1117DP 81

13 9 jm/sh/8